

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-045-R - ORDER NO. 94-521 ✓
JUNE 6, 1994

IN RE: Application of South Carolina Electric) ORDER GRANTING
 & Gas Company for Adjustments in the) SUMMARY
 Company's Coach Fares and Charges.) JUDGMENT

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of South Carolina Electric & Gas Company (SCE&G or the Company) filed on March 31, 1994, requesting that this Commission terminate the low income bus fare program established in previous Orders of this Commission. The low income fare allowed qualified riders to ride buses for a fare of 40¢ as opposed to the 75¢ general fare.

By letter dated March 31, 1994, the Commission's Executive Director required the Company to publish a Notice of Filing and hearing in newspapers of general circulation in Columbia and Charleston once a week for two consecutive weeks and to post a copy of the Notice at all places bus tickets are sold, at one conspicuous place on all coaches, and allow the driver of each coach to provide each rider for two weeks a copy of the Notice of Filing and Hearing. The Executive Director required the Company to furnish written certification that these two tasks had been accomplished. SCE&G furnished certification. As a result, several Petitions to Intervene were filed. These are as follows: from the Consumer Advocate for the State of South Carolina; the Women's

Shelter; John C. Ruoff, PhD; South Carolina Legal Services Association; and Palmetto Legal Services, along with several individuals; and Mamie Jackson. Prior to the date of the hearing scheduled for this matter, the Intervenor Women's Shelter filed with this Commission a Motion to Dismiss or for Summary Judgment. Among other allegations contained in the Petition, were the following allegations. "Even assuming for the purposes of this Motion that SCE&G could establish all the facts asserted in its Application it still would not be entitled to the relief that it seeks as a matter of law. ... The Commission has previously determined that a proper balance of the interests of consumers and investors, as well as the public interest as a whole, requires the establishment of the existing low income fare." For the reasons stated below, the Commission has determined that summary judgment must be granted in this case in favor of the Women's Shelter.

Regulation 103-800(B) states that the adoption of these rules shall, in no way, preclude the Public Service Commission ... "from making additions thereto, pursuant to provisions of law, upon petition of a proper party or upon its own Motion." The Commission hereby adopts S.C. Rule of Civil Procedure 56 on Summary Judgment, which states in part: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Although no affidavits were filed in this case, SCE&G prefiled the testimony of Jimmy Addison and Maxine Marshall.

The Commission believes that although these were not in sworn affidavit form, that they constitute the substantial equivalent of affidavits for the Commission's consideration of the Motion for Summary Judgment, in that they provide what the witnesses will say under oath on the day of the hearing.

In our Order No. 92-781, we Ordered the Staff to develop a low income discount program and present it to this Commission at a later date. In our Order Nos. 92-928 and 92-990, this Commission established a low income discount rider program whereby qualifying low income riders could ride at the rate of 40¢, as opposed to the usual 75¢ fare. The Commission believes that the prefiled testimony of the witnesses and the Application in this case give no reason for the Commission to change its mind in this regard. (The Commission would note with interest that Order Nos. 92-781, 94-928, and 92-990 are under appeal in Richland County Circuit Court Docket No. 92-CP-40-5158.) The testimony of Jimmy Addison, Controller for SCE&G, shows that the transit portion of SCE&G is operating at a loss with the low income discount program. This fact was established without question in Docket No. 92-023-R in the overall rate case prior to the establishment of a low income discount plan. Therefore, the testimony of Addison is not convincing to this Commission that the low income plan should be dropped simply because the transit system is being operated at a loss. The other testimony filed by SCE&G is that of Maxine Marshall, an expert witness employed by ATE Management, Inc. Large portions of Marshall's testimony are actually irrelevant, in that they discuss various modifications to the entire bus system in terms of

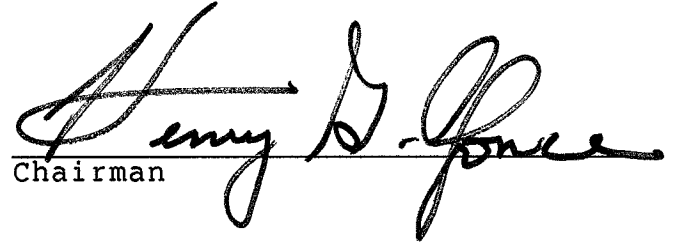
procedure and other matters. The only portion of the testimony that addresses the low income discount plan states that Marshall recommends dropping of the plan because it increases the losses suffered by the Company on its transit system. Again, the Commission already established this in Docket No. 92-023-R. No new information is really presented to the Commission in the Company's Application or the prefiled testimony of its witnesses. The Summary Judgment is properly entered where there is no genuine issue as to any material fact and the only question remaining to be determined is a matter of law. The purpose of Summary Judgment is to obviate delay where there is no real material issue of fact. Hammond v. Scott, 268 S.C. 137, 2323 S.E.2d 336 (1977). It is clear in the present case that absolutely no material issue of fact exists. The Commission, therefore, sees no purpose in having a hearing on this matter, since the only issue left is a question of law before the Commission. The Commission simply has not changed its mind as to the need for a low income discount plan. The Company has submitted no documents that would convince us that elimination of the plan is in the public interest. For this reason, the Commission believes that it must grant a Motion for Summary Judgment in favor of the Women's Shelter.

IT IS THEREFORE ORDERED THAT:

1. The Motion for Summary Judgment filed by the Intervenor, Women's Shelter, is hereby granted. SCE&G's Application is, therefore, dismissed.
2. The low income discount program shall remain in full force and effect.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)